

## **REMARKS**

Applicant is in receipt of the Office Action mailed June 3, 2005. Claims 1, 4-28, and 31-45 were rejected and remain pending in the application.

### **Section 102 Rejections**

Claims 1, 4-11, 18-28, and 31-45 were rejected under 35 U.S.C. 102(e) as being anticipated by Limondin et al. (US 6,226,783, hereinafter “Limondin”). Applicant respectfully traverses this rejection.

Limondin simply does not teach the combination of elements recited in the present claims. Taking claim 1 as an exemplary claim, the claim recites as follows:

1. (Previously Presented) A computer-implemented method for creating a graphical program based on a sequence that includes motion control, machine vision, and data acquisition (DAQ) operations, the method comprising:

displaying a graphical user interface (GUI) that provides GUI access to a set of operations, wherein the set of operations includes one or more motion control operations, one or more machine vision operations, and one or more DAQ operations;

receiving user input to the graphical user interface specifying the sequence of operations, wherein the specified sequence of operations includes at least one motion control operation, at least one machine vision operation, and at least one DAQ operation;

storing the specified sequence of operations based on the user input; and

automatically generating a graphical program to implement the specified sequence of operations, wherein said automatically generating the graphical program comprises generating graphical code in the graphical program without direct user input, and wherein the graphical code comprises a plurality of interconnected nodes which visually indicate the functionality of the graphical program.

Thus, according to the method of claim 1, a sequence of operations is specified by user input, and a graphical program to implement the sequence of operations is automatically generated. Thus, the sequence of operations and the graphical program are two different things. However, the Examiner has equated both the sequence of operations and the graphical program to the same thing, i.e., Limondin’s step program.

Furthermore, Applicant submits that Limondin’s step program is not automatically generated, and the Examiner has even explicitly admitted as much. The

Examiner writes that, “The step program is created by having the user graphically manipulating/editing the step icons’ parameters (i.e., inputs and outputs) and connections between the icons. The execution order of the steps can also be graphically defined by the user.” Therefore, Limondin’s step program is created in response to direct user input. However, claim 1 recites that, “automatically generating the graphical program comprises generating graphical code in the graphical program without direct user input”.

Thus, for at least the reasons provided above, Applicant submits that Limondin does not teach the combination of elements recited in claim 1. Applicant therefore submits that claim 1 and those claims dependent therefrom are patentably distinct and non-obvious over Limondin, and are thus allowable.

Independent claims 25, 26, 28, 37, and 39-45 each include similar features and limitations, and so the above arguments apply with equal force to these claims. Thus, for at least the reasons provided above, Applicant respectfully submits that claims 25, 26, 28, 37, and 39-45, and those claims respectively dependent therefrom, are similarly patentably distinct and non-obvious over Limondin, and are thus allowable.

### Section 103 Rejections

Claims 12-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Limondin in view of McDonald et al. (US 5,966,532, hereinafter “McDonald”). Applicant reminds the Examiner that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), thus Applicant respectfully submits that since independent claim 1 has been shown above to be patentably distinct and non-obvious over the prior art, dependent claims 12-17 are also patentably distinct and non-obvious.

Applicant also notes that the 103 rejection which relies on the combination of Limondin and McDonald was already traversed in response to the previous Office Action, and this traversal is re-asserted in the current response. In particular, Applicant submits that that Examiner has not shown that the prior art contains a clear and particular teaching or suggestion for combining Limondin and McDonald to produce the combination of elements recited in claims 12-17.

As the Examiner is certainly aware, “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)” as stated in the MPEP §2142 (*emphasis added*).

As held by the U.S. Court of Appeals for the Federal Circuit in *Ecolochem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis. Furthermore, the showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular. . .Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

Thus, there must be a clear and particular initial suggestion in the prior art to make the combination, but the Examiner has provided no evidence of such a suggestion in the prior art.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-58300/JCH.

Also enclosed herewith are the following items:

- Return Receipt Postcard
- Request for Continued Examination
- Information Disclosure Statement

Respectfully submitted,



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